

STATUTORY INSTRUMENTS

2005 No. 1117

**The Special Educational Needs and
Disability (Northern Ireland) Order 2005**

PART III

DISABILITY DISCRIMINATION IN EDUCATION

CHAPTER II

FURTHER AND HIGHER EDUCATION

Enforcement, etc.

Enforcement, remedies and procedures

31.—(1) A claim by a person—

- (a) that a responsible body has discriminated against him [^{F1}, or subjected him to harassment,] in a way which is unlawful under this Chapter,
- (b) that a responsible body is by virtue of Article 44 or 45 to be treated as having [^{F2}done so] , or
- (c) that a person is by virtue of Article 44 to be treated as having [^{F3}done so] ,

may be made the subject of civil proceedings in the same way as any other claim in tort for breach of statutory duty.

[^{F4}(1A) Where—

- (a) a claim is brought under paragraph (1), and
- (b) the claimant proves facts from which the court could, apart from this paragraph, conclude in the absence of an adequate explanation that the defendant has acted in a way which is unlawful under this Chapter,

the court shall uphold the claim unless the defendant proves that he did not so act.]

(2) Damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.

(3) Proceedings may be brought only in a county court.

(4) The remedies available in such proceedings are those which are available in the High Court

(5) The fact that a person who brings proceedings under this Chapter against a responsible body may also be entitled to bring proceedings against that body under Part II of the 1995 Act is not to affect the proceedings under this Chapter.

(6) Part II of Schedule 2 makes further provision about the enforcement of this Chapter and about procedure.

Status: Point in time view as at 10/08/2006. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: The Special Educational Needs and Disability (Northern Ireland) Order 2005, Cross Heading: Enforcement, etc. is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F1** Words in art. 31(1)(a) inserted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\), regs. 1, 11\(2\)\(a\)](#)
- F2** Words in art. 31(1)(b) substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\), regs. 1, 11\(2\)\(b\)](#)
- F3** Words in art. 31(1)(c) substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\), regs. 1, 11\(2\)\(b\)](#)
- F4** Art. 31(1A) inserted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\), regs. 1, 11\(3\)](#)

VALID FROM 01/09/2006

[^{F5}Enforcement of Articles 30B and 30C

31A.—(1) This Article applies to an act which is unlawful under Articles 30B or 30C.

(2) Legal proceedings in relation to an act to which this Article applies may only be brought by the Commission in accordance with this Article and may not be brought by anyone else.

(3) Where the Commission thinks that a person has done an act to which this Article applies the Commission may apply to a county court.

(4) On an application under paragraph (3) in respect of an alleged act to which this Article applies, the court shall determine whether the allegation is correct.

(5) The Commission may apply to a county court for an injunction restraining a person from doing an act to which this Article applies where—

(a) either—

(i) a court has determined under paragraph (4) that the person has done an act to which this Article applies, or

(ii) the Commission thinks that the person has done an act to which this Article applies, and

(b) the Commission thinks that if unrestrained the person is likely to do another act to which this Article applies.

(6) Paragraph (1) does not apply to an act which constitutes an offence.

(7) In this Article “the Commission” means the Equality Commission for Northern Ireland.

- F5** Arts. 31A, 31B inserted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\), regs. 1, 12](#)

VALID FROM 01/09/2006

Enforcement of Articles 30B and 30C: supplemental matters

31B.—(1) An application under Article 31A(3) may be presented or made only—

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- (a) within the period of six months beginning with the date (or last date) on which the alleged unlawful act occurred, or
 - (b) with the permission of the court.
- (2) A determination under Article 31A(4) shall not be relied upon by a county court in proceedings under Article 31A(5) while an appeal against the determination—
- (a) is pending, or
 - (b) may be brought (disregarding the possibility of an appeal out of time with permission).
- (3) An application under Article 31A(5) may be made only—
- (a) within the period of five years beginning with the date (or last date) on which the unlawful act referred to in that paragraph occurred, or
 - (b) with the permission of the court.]

F5 Arts. 31A, 31B inserted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1, 12

Occupation of premises by educational institution

32.—(1) This Article applies if—

- (a) premises are occupied by an educational institution under a lease;
- (b) but for this Article, the responsible body would not be entitled to make a particular alteration to the premises; and
- (c) the alteration is one which the responsible body proposes to make in order to comply with Article 30 [^{F6}or Article 30A(5)] .

(2) Except to the extent to which it expressly so provides, the lease has effect, as a result of this paragraph, as if it provided—

- (a) ^{F7} for the responsible body to be entitled to make the alteration with the written consent of the lessor;
- (b) ^{F7} for the responsible body to have to make a written application to the lessor for consent if it wishes to make the alteration;
- (c) ^{F7} if such an application is made, for the lessor not to withhold his consent unreasonably; and
- (d) ^{F7} for the lessor to be entitled to make his consent subject to reasonable conditions.

^{F7}(3) In this Article—

“lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and

“sub-lease” and “sub-tenancy” have such meaning as may be prescribed.

(4) If the terms and conditions of a lease—

- (a) impose conditions which are to apply if the responsible body alters the premises, or
- (b) entitle the lessor to impose conditions when consenting to the responsible body's altering the premises,

the responsible body is to be treated for the purposes of paragraph (1) as not being entitled to make the alteration.

(5) Schedule 3 supplements the provisions of this Article.

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- F6** Words in [art. 32\(1\)\(c\)](#) inserted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1, **13**
- F7** mod. by SR 2005/371

Validity and revision of agreements of responsible bodies

33.—(1) Any term in a contract or other agreement made by or on behalf of a responsible body is void so far as it purports to—

- (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
- (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
- (c) prevent any person from making a claim under this Chapter.

(2) Sub-paragraphs (b) and (c) of paragraph (1) do not apply to an agreement settling a claim under Article 31.

(3) On the application of any person interested in an agreement to which paragraph (1) applies, a county court may make such order as it thinks just for modifying the agreement to take account of the effect of paragraph (1).

(4) No such order may be made unless all persons affected have been—

- (a) given notice of the application; and
- (b) afforded an opportunity to make representations to the court.

(5) Paragraph (4) applies subject to any county court rules providing for notice to be dispensed with.

(6) An order under paragraph (3) may include provision as respects any period before the making of the order.

Status:

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